

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 21, 2009 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 3, 6-10, 13, 15 and 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by DE 3205205.

DE 3205205 discloses an aerator comprising all the featured elements of the instant invention, see Figures 1 and 2.

4. Claims 3, 6, 8-10 and 15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Aghnides.

Aghnides discloses an aerator comprising all the featured elements of the instant invention, see Figures 1 and 2.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3205205.

DE 3205205 discloses all the featured elements of the instant invention except for the aerator which can be screwed into the channel of the ball/spherical segment. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have an aerator which can be(i.e. capable of) screwed into the ball/segment, wherein so doing would amount to the mere substitution of one functional equivalent securing means for another within the same art and the selection of any of these securing means whether a screw thread or friction fit would work equally well in the DE 3205205 device.

Response to Arguments

7. Applicant's arguments with respect to claims 3, 6-10 and 13-16 have been considered but are moot in view of the new ground(s) of rejection. Independent claim 3 as currently amended is directed to essentially the same patentable features as presented in claims 1 and 3, which were filed on September 19, 2006, and such claims were rejected in the Office action mailed October 30, 2008.

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Allowable Subject Matter

8. Claim 11 is allowed.
9. Claims 1, 2, 4 and 5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN J. GANEY whose telephone number is (571)272-4899. The examiner can normally be reached on 9:00-5:00; Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on 571-272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Steven J. Ganey/
Primary Examiner
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